

(3) (1)

P219

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. NO. 31149/2003

PETITIONER :-

1. GAUTAM CHAD JAIN
S/O SHOBHA JAIN AGED ABOUT 45 YEARS
R/O SATTI CAHURA GANJPARA, DURG
TAH & DISTT. DURG.(C.G)
2. SMT TARUN LATA JAIN
W/O SHRI JEEWAN JAIN AGED ABOUT 42 YEARS
R/O SATTI CAHURA GANJPARA, DURG
TAH & DISTT. DURG.(C.G)

VERSUS

RESPONDENTS :-

1. STATE OF CHHATTISGARH
THROUGH : COLLECTOR OF STAMP DURG
TAH. & DISTT. DURG .(C.G.).
2. BOARD OF REVENUE CIRCUIT COURT RAIPUR
TAH & DISTT. RAIPUR (C.G.)

P. R. No. 2336/52
Presented by Shri. V. K. Tomaskar.
dated 12.09.03

WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA

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TO A.G. BILASPUR

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HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 3449 of 2003

Gautam Chand Jain and another

Versus

State of Chhattisgarh and another

POST FOR ORDER ON 21st JANUARY, 2004

Sd/-
L.C:BHADOO
Judge

20.01.2004

HIGH COURT OF JUDICATURE, CHHATTISGARH AT RAIPURWrit Petition No. 3449 of 2003

Gautam Chand Jain and another

Versus

State of Chhattisgarh and another

Present:

Shri V.G. Tamaskar, Advocate for the petitioners.

Shri Ranbir Singh Marhas, Govt. Advocate for the State

ORDER

(Passed on 21st January, 2004)

As per L.C. Bhadoo J.

The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India challenging the legality, validity and propriety of the order dated 6-5-2003, Annexure-P/1, passed by the Board of Revenue, Circuit Court, Raipur.

2. Brief facts leading to filing of this petition are that the petitioners had jointly purchased plot of land bearing Khasra No.51/5 patwari halka No.19, situated at village Borsi, area 0.444 hectare, Tehsil and District Durg through a sale deed dated 17-1-2001 for a consideration of Rs.4,25,000/- from one Shri Satyendra Chand Jain. Thereafter, on 12-4-2001, petitioner No.2 appointed petitioner No.1 as general power of attorney by executing a deed to deal with the aforesaid land for the purposes of supervision, sale, gift etc. and based on that power of attorney, petitioner No.1 also sold small portion of land to one Shri Ghanshyam Sahu on 16-1-2002.

3. An audit objection was raised by the department that the power of attorney has been executed on a stamp of Rs.100/-, whereas it ought to have been executed on the valuation of market value of the property and stamp to the tune of Rs.7.50 on that market value of property ought to have been paid on the document of power of attorney and the petitioners were asked to explain.

4. The petitioners filed objection/reply, Annexure-P/2. However, the Collector of Stamp, Durg, vide order dated 26-4-2002, Annexure-P/3 assessed the stamp duty to the tune of Rs.39,995/-. Against which the petitioners filed an appeal before the Board of Revenue. The Board of Revenue dismissed the appeal solely on the ground that the appeal was barred by limitation. The order of the Board of Revenue is Annexure-P/4.

5. It has been mentioned in the petition that the petitioners filed an application before the Collector of Stamp, Durg on 27-4-2002 for obtaining the certified copy of the order dated 26.04.2002 and the copy of the same was delivered to the petitioners on 19-3-2003, therefore, the appeal was filed on 2-4-2003. However, in support of the appeal an application for condonation of delay under Section 5 of the Limitation Act (Annexure-P/5) was also filed. However, the learned Board of Revenue dismissed the appeal summarily holding that the appeal was barred by limitation which is contrary to the law, justice and equity.

6. I have heard Mr. V.G. Tamaskar, learned counsel for the petitioners and Mr. Ranbir Singh Marhas, Govt. Advocate for the State and perused the impugned order. In the first paragraph of the order the learned Revenue Board has observed that the appeal has been filed under Section 44(1) of the Land Revenue Act, whereas the appeal ought to have been filed under Section 47 of the Indian Stamp Act, 1899, therefore, the appeal has been filed under the wrong provisions of law and on account of that the appeal is not entertainable. The second ground on which the appeal has been dismissed is

that the Revenue Board has held that the perusal of the certified copy reveals that the application was filed on 27-4-2002 on which the date for appearance of the petitioners was given as 18-5-2002, but the petitioners went to collect the copy on 19-3-2003 whereas the copy was already ready for delivery on 31-5-2002. Therefore, the ground for condonation of delay shown in the application that the copy was not delivered even after approaching many times for obtaining the copy cannot be taken as sufficient cause for condoning the delay.

7. As far as first ground is concerned, in my opinion, the learned Board of Revenue ought to have considered the appeal of the petitioners in a reasonable manner. Merely by mentioning the wrong provisions of law the appeal ought not to have been rejected technically. The petitioners ought to have been given chance to correct the provisions of law which as per the provisions of Section 47(A)(iv) of the Indian Stamp Act, 1899 the petitioners were entitled to file an appeal before the Board. The learned board ought to have considered the appeal on its merits by giving opportunity to them to correct the provisions of law.

8. Now, coming to the second ground for dismissal of the appeal, it is admitted position that the application was made on the next day of the order i.e. on 27-4-2002 and the copy of the same was delivered to the petitioners on 19-3-2003. The only question is that as observed by the learned Revenue Board that on the application the date of preparation of the application was mentioned as 31-5-2002, therefore, it cannot be considered that even after approaching by the petitioners the office has not supplied the copy to the petitioners. But the petitioners filed an application under Section 5 of the Limitation Act supported with the affidavit in which they mentioned that the copy of the order was not delivered to them even after approaching so many times. In the facts and circumstances of the case, the learned Revenue Board ought to have considered their application under Section 5 of the Limitation Act.

9. Moreover, the appeal was within limitation from the date of the delivery of the copy of the order and there is nothing in the order which goes to show that any contrary affidavit was filed by the office that the petitioners had not approached for taking the delivery of the copy. Therefore, in the facts and circumstances, the learned Revenue Board ought to have considered the application of the petitioners with a pragmatic approach and ought to have decided the matter on merits unless and until the matter is hopelessly barred.

10. In the result, I am of the opinion that it is a fit case in which the impugned order of the Board of Revenue cannot be sustained and the same should be set aside and the learned Board of Revenue should be directed to decide the appeal on its own merits. Therefore, the impugned order passed by the Board of Revenue is set aside. The case is remanded back to the Revenue Board and the Revenue Board is directed to decide the appeal on its own merits considering the appeal within limitation. The petitioners may be asked to correct the provisions of law under which the appeal has been filed.

11. With the directions aforesaid, the writ petition is disposed of.

Sd/-
L.C. BHADOO
Judge

21-1-2004